



January 31, 2018

Via Email to RulesComments@twdb.texas.gov

Mr. Todd Chenoweth, General Counsel
Texas Water Development Board
P.O. Box 13231
Austin, Texas 78711-3231

Re: Proposed Amendments to 31 Texas Administrative Code Chapter 357 – Regional Water Planning; Published in *Texas Register* on December 22, 2017 at 42 *Tex.Reg.* 7290

Dear Mr. Chenoweth:

The Central Texas Water Coalition (CTWC) appreciates the opportunity to provide these comments on the proposed Texas Water Development Board (TWDB) rules amending 31 Texas Administrative Code (TAC) Chapter 357 to incorporate legislative changes, increase public notice and opportunity for comment on a Regional Water Planning Group's (RWPG's) milestone decisions, and clarify some aspects of the rules. CTWC is a non-profit organization advocating for responsible water management and conservation policies for the Highland Lakes of Central Texas. We believe the water planning work of the TWDB and the RWPGs is critically important to the successful, long-term preservation and management of our state's water resources.

Please consider the following comments on: 1) the proposed Chapter 357 rule amendments; and 2) the proposed revisions to the TWDB's "General Guidelines for Fifth Cycle of Regional Water Plan Development."

I. Comments on Proposed Amendments to 31 TAC Chapter 357

- A. Section 357.12(a-1) -- General Regional Water Planning Group Responsibilities and Procedures.** The proposed rules apparently add a new subsection designated "(a-1)" in the midst of this section, between subsections (a) and (b). We recognize the language from Senate Bill 347 (85th Legislature), but we do not understand the reason for its numbering and location within this rule. Should this be a separate subsection?
- B. Section 357.12(c) – General Regional Water Planning Group Responsibilities and Procedures.** This subsection (c) identifies the required contents of the Technical Memorandum that is prepared and submitted to the TWDB by the RWPGs during the five-year planning cycle (and well before the end of the cycle). However, it is unclear

how the contents of this Memorandum will be developed based on our understanding of the sequence of events during a planning cycle. For example, the rule states that the Technical Memorandum will include the “most recent population and Water Demand projections **adopted by the Board**,” yet it is unclear how a RWPG’s Revision Requests for Population and Water Demand Projections are handled. Does this mean a RWPG should use the Board’s initially proposed Population and Water Demand numbers in its Technical Memorandum? Or the RWPG should include the Revised Population and Water Demand Projections that it submits to the agency for approval? Are these Projections actually “adopted by the Board” (as the proposed rule suggests)? Or are they “approved by the Executive Administrator”? It seems confusing to refer to these components of a Technical Memorandum as numbers that have been “adopted by the Board” when the Technical Memorandum itself is defined as “documentation of the RWPG’s preliminary analysis of Water Demand projections, ...” See proposed Section 357.10(33). Please clarify or explain the reason for this choice of words in subsection (c)(1) of Section 357.12.

In subsections (c)(2) and (c)(3), the rule requires water availability and water supply information, “as entered into the State Water Planning Database.” Please confirm that this requirement is consistent with the timing of the Memorandum.

Although Section 357.12 sets forth a process for a RWPG to pursue simplified planning and provides direction on awaiting the Executive Administrator’s approval to proceed on that path, it would also be helpful to include language in this section stating whether a RWPG that is not pursuing the simplified planning path must also await the Executive Administrator’s approval before proceeding under the terms of the Technical Memorandum it submitted.

C. Section 357.21 – Notice and Public Participation. Section 357.21 provides extensive and complicated directives on the notice requirements for various actions that RWPGs may take during a planning cycle. We strongly support statutory and regulatory provisions assuring that interested persons will receive notice and have an opportunity to attend meetings and comment on the discussions and deliberations that come before the RWPGs and their committees during this important and significant process. For that reason, we oppose the phrase that appears in Section 357. 21(b)(5)(A), (c)(5)(A), and (d)(6)(A), which indicates that RWPGs can provide a notice and agenda for an upcoming meeting “to the County Clerk of each county in the Regional Water Planning Area” IN LIEU OF posting the notice and meeting agenda on the website of the RWPG or host Political Subdivision. We cannot understand how providing notice to a County Clerk could possibly serve as a meaningful or effective substitute for providing notice via websites. We urge the TWDB to recognize how most people obtain information in this era of modern technology – and our reliance upon online information. If the agency wishes to allow notice to County Clerks as an additional method of increasing public

notice, that is fine. However, the rule as written suggests that mailing something to a County Clerk will satisfy a key component of the public notice procedures, and we do not view it as an equivalent method for providing notice. Instead, it seems to be contradictory to the directives for open government that were set forth in Senate Bill 347.

In addition to this specific comment above, we encourage the agency to re-visit the lengthy and somewhat confusing list of situations, triggering events, and resulting notice requirements that now appear in Section 357.21. In our view, the rules governing public notice and involvement opportunities during the regional planning process should be easy to understand and follow, and the current regulatory text seems like a challenging assemblage of words to decipher.

As an additional and important request resulting from the passage of Senate Bill 347 in 2017, we would like the TWDB to provide additional guidance to RWPG members and alternates who wish to discuss water planning matters outside of committee or subcommittee meetings, and who do not wish to run afoul of any open meetings act requirements. In our view, the committees and subcommittees of a RWPG are advisory bodies, without the authority to make decisions for the RWPG. The decisions of a committee are brought before the entire RWPG as a mere recommendation for consideration by the voting members of a RWPG, where those recommendations will be discussed and considered in full – there is no rubber-stamp. While we believe these committee meetings are clearly subject to the advance public notice and opportunity for public comment and involvement provisions of Texas law, we would appreciate the TWDB’s guidance on what communications may occur between individual members and alternates of a RWPG or RWPG committee outside of regularly scheduled RWPG and committee meetings.

D. Section 357.32 – Water Supply Analysis. In subsection (c)(1) of this section, the TWDB rules recite the tasks that a RWPG must perform as part of its surface water supply analyses. We support the option stated in that paragraph to utilize procedures other than Firm Yield to evaluate surface water availability, and we suggest that the TWDB provide more guidance and support for RWPGs to develop a “Safe Yield” for water supply reservoirs within their water planning areas.

II. Comments on Revisions to Second Amended General Guidelines for Fifth Cycle of Regional Water Plan Development

A. Section 3.2 -- Evaluation of Surface Water Availability. Current Guidance states that Regional Water Plans shall evaluate surface water availability using the TCEQ’s WAMs; specifically, the unmodified RUN #3 version, which includes all water rights at full authorization; all applicable permit conditions, such as flow requirements, are met; and, no return flows. However, the requirement to incorporate demands from all applicable

permit conditions sometimes is interpreted to exclude water demands that are temporary or intermittent or “interruptible.” Sometimes these water demands are not accounted for in the current calculations of water available to firm customers. This issue becomes more precarious as the actual water usage approaches contracted water sales commitments and leaves the region more vulnerable to severe multiple year droughts. Please add language to assure that all contractual commitments (including short-term annual commitments) for water sales from reservoirs are considered in the evaluations of water availability and water supplies. For planning purposes, it would also be important to know when interruptible supplies are no longer projected to be available.

B. Section 3.2.1 -- Standard Criteria and Assumptions for TCEQ WAM RUN #3. In the list of criteria to meet, Item 4 on the list indicates that the minimum allowable reservoir levels are the top of dead pool unless the use of a lower level is approved by the Executive Administrator (this dead pool limitation applies only to situations where the dead pool is specified in the water right permit or other binding agreement). Including the top of the dead pool appears the most prudent approach. It is unclear as to why the dead pool should ever be ignored, particularly in regions with large municipal demands and growth, and where the surface water reservoirs provide the primary water supply. We suggest using the top of dead pool in all cases where Firm Yield is utilized, as the Firm Yield methodology provides no reserve, and droughts worse than the Drought of Record are known to have occurred in Texas.

In the same list of criteria, Item 6 suggests that evaporative losses should be based on evaporation rate data that best coincide with the location of the reservoir and the period of record and time steps for inflows. As ambient temperatures are projected to continue to rise, a more conservative basis would be to use the actual average temperature from a more recent period. The adverse impact on inflows from higher temperatures was identified in the recent August 2017 Report to TWDB by Kennedy Resource Company entitled "Evaluation of Rainfall/Run-off Patterns in the Upper Colorado River Basin." We suggest the reference to the "period of record" timing to a more current and representative period, such as the last 5 years, for choosing the temperature to evaluate evaporative losses.

C. Section 3.6.2 -- Potential Surface Water Hydrologic Variance Assumptions. In the list of potentially appropriate surface water modeling assumptions from past regional plans, Item 4 includes a “Reservoir Safe Yield” as a WAM modification to decrease the firm yield of the reservoir so that an identified annual volume is held in reserve to account for droughts worse than the drought of record. The volume of this annual reserve is determined by the RWPG and can vary by source. However, no guidelines or criteria are provided as to under what conditions, it would be prudent to utilize a Safe Yield approach versus the predominant Firm Yield approach that provides no reserve for multi-year droughts in a large metropolitan area that is primarily dependent on surface water. These guidelines should mandate the use of Safe Yield, not Firm Yield, as the default criterion for water planning purposes. In our understanding that Safe Yield is being

increasingly utilized across the State in Regions such as C, F, G, N, and O. This kind of planning could help to avoid the dire situation that now exists in Cape Town, South Africa. Protection by a 2-3-year reserve would seem prudent for large metropolitan areas that are still seeing and expecting huge growth rates.

Thank you for the opportunity to provide these comments, and please contact me at (512) 755-4805 if you have any questions or if we can be of any assistance in the development of these rules and guidance.

Sincerely,

A handwritten signature in black ink that reads "Jo Karr Tedder". The signature is written in a cursive style with a large initial "J".

Jo Karr Tedder,
President

cc: Ms. Temple McKinnon (via email to temple.mckinnon@twdb.texas.gov)

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